

## **Assembly Bill No. 161**

### **CHAPTER 754**

An act to amend Section 12076 of, and to repeal Section 12071 of, the Penal Code, and to amend Section 3 of Chapter 909 of the Statutes of 2002, and Section 4 of Chapter 911 of the Statutes of 2002, relating to firearms, and making an appropriation therefor.

[Approved by Governor October 10, 2003. Filed  
with Secretary of State October 11, 2003.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 161, Steinberg. Firearms.**

Existing law authorizes the Department of Justice to require a firearms dealer to charge a fee to reimburse certain expenses incurred by the department in connection with checking the backgrounds of prospective firearms purchasers. Existing law also provides that these fees may not be used directly or as a loan to fund other programs.

This bill would recast those provisions to provide that the fees may be used to fund firearms-related regulatory and enforcement programs, as specified.

Existing law, subject to a contingency, requires persons licensed as a firearms dealer, importer, manufacturer, or collector, as specified, to provide a copy of that license to the Department of Justice, as specified. Existing law regulates the licensing of firearms dealers and various dealer activities including, among other things, the transfer of firearms by dealers, and, subject to a contingency, requires verification of certain firearms dealers' licenses under specified circumstances. Existing law makes operation of those provisions effective January 1, 2004, contingent upon a specified amount of money being in reserve in the Dealers' Record of Sale Special Account.

This bill would provide that those provisions, the operation of which is currently subject to a contingency, would become operative on January 1, 2004.

This bill would make an appropriation of \$548,000 from the Dealer's Record of Sale Special Account to the Department of Justice for the purpose of implementing the provisions requiring verification of certain firearms dealers' licenses in specified circumstances.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12071 of the Penal Code, as amended by Section 1 of Chapter 911 of the Statutes of 2002, is repealed.

SEC. 2. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.



(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be



purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is necessary to fund the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(10) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with



the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.



(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(l) As used in this section, the following definitions apply:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.





(3) “Sale” means the sale, loan, or transfer of a firearm.

(4) “Seller” means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 3. Section 9 of Chapter 909 of the Statutes of 2002 is amended to read:

Sec. 9. Notwithstanding subdivision (c) of Section 12083, Section 12083 of the Penal Code shall become operative on January 1, 2004.

SEC. 4. Section 4 of Chapter 911 of the Statutes of 2002 is amended to read:

Sec. 4. Section 1.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2080. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 2080, in which case Section 12071 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until January 1, 2004, at which time Section 1.5 of this bill shall become operative.

SEC. 5. The sum of five hundred forty-eight thousand dollars (\$548,000) is hereby appropriated from the Dealers’ Record of Sale Special Account to the Department of Justice for purposes of implementing Section 12083 of the Penal Code, as added by Chapter 909 of the Statutes of 2002.

